

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into between the United States of America, acting through the United States Department of Justice and the United States Attorney's Office for the Eastern District of Pennsylvania and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the "United States"); and Temple University Physicians (TUP) (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. TUP, formerly known as Temple University Medical Practices, is a division of Temple University, a research university with seventeen schools and colleges of which Temple University School of Medicine (TUSM) is one.

B. TUP is the physician practices of TUSM.

C. TUP, during the period covered by this Agreement, employed and/or billed for the services of physicians in their capacities of providing supervision to resident physicians and/or providing professional services.

D. The Medicare Program (Medicare), which was established by Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg, allows under Part A, for the reimbursement for salaries of hospital residents and interns and the teaching activities of the clinical faculty (such as those working within TUP) provided to these residents and interns, and under Part B, for reimbursement of professional services provided directly by the clinical faculty or by residents and interns under the clinical faculty's direct, personal, and identifiable supervision and control.

E. OIG-HHS has announced a nationwide initiative to review compliance with the rules governing the Medicare Part B payment for physicians at teaching hospitals (this initiative is also known as "PATH").

F. The United States contends that TUP submitted or caused to be submitted claims for payment to Medicare.

G. The United States contends that it has certain civil claims against TUP under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines, for engaging in the following conduct during the period from July 1, 1995 through June 30, 1996: (1) the submission of claims by TUP to the Medicare Program for certain services, provided at TUSM that TUP represented were personally and identifiably provided by TUP Faculty when TUP does not possess sufficient

documentary evidence, as required by the Medicare Program, to show with respect to those certain claims that the respective physicians were personally and identifiably involved in the performance of such services; (2) the submission of claims by TUP to Medicare for professional services of TUP Faculty in connection with the Residency Program at TUSM, which claims were improperly upcoded and/or represented a greater level of service than those services actually provided; and (3) the submission of claims to Medicare for services provided by TUP faculty for which TUP did not have any, or sufficient, documentation to satisfy the requirements of the Medicare program (hereinafter collectively referred to as the "Covered Conduct"). The United States alleges that, as the result of the Covered Conduct, TUP received payments to which it was not entitled.

H. TUP denies the contentions of the United States as set forth in Paragraphs F and G above and denies that it has any liability relating to these contentions and allegations.

I. This Agreement is neither an admission of liability by TUP nor a concession by the United States that its claims are not well founded.

J. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. TUP agrees to pay to the United States One Million Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000) (the "Settlement Amount"). TUP agrees to pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office, Philadelphia, Pennsylvania. TUP agrees to make this electronic funds transfer no later than 30 days from the Effective Date of this Agreement.

a. Subject to the exceptions in Paragraph 2 below, in consideration of the obligations of TUP set forth in this Agreement, conditioned upon TUP's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release TUP, its current and former physician and non-physician employees and its umbrella corporation, the Temple University-Of The Commonwealth System of Higher Education (the "University"), its current and former trustees, officers agents, representatives and employees insofar as they have acted on behalf of the University (the "Released Parties") from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud for the

Covered Conduct. Expressly not included in this release are any and all direct and indirect subsidiary corporations of the University including, but not limited to, the Temple University Health System, Inc.

2. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including TUP) are the following:

a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Any administrative liability, including mandatory exclusion from Federal health care programs;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon such obligations as are created by this Agreement; and

f. Any liability for failure to deliver goods or services due.

3. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against the Released Parties from Medicare, Medicaid, or other Federal health care programs (as defined in 42

U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

4. TUP and the University waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. TUP and the University agree that this Agreement is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

5. TUP and the University fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which either of them have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and TUP shall not resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

7. TUP agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of TUP, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA), and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement,
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement,
- (3) TUP's investigation, defense, and corrective actions undertaken in response to the United States'

audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

(4) the negotiation and performance of this Agreement, and

(5) the payment TUP makes to the United States pursuant to this Agreement.

(All costs described or set forth in this Paragraph 7.a are hereafter, "unallowable costs").

b. Future Treatment of Unallowable Costs: If applicable, these unallowable costs shall be separately determined and accounted for by TUP, and TUP shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by TUP or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, VA, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, TUP further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA, and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not

limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by TUP or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. TUP agrees that the United States, at a minimum, shall be entitled to recoup from TUP any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by TUP or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on TUP or any of its subsidiaries' or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine TUP's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

8. This Agreement is intended to be for the benefit of the Parties and the Released Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 9, below.

9. TUP and the University waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

10. TUP and the University warrant that they have reviewed their financial situation and that they are currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following the payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to TUP, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which TUP was or became indebted, on or

after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

11. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. TUP represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

13. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Eastern District of Pennsylvania.

14. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

15. The individuals signing this Agreement on behalf of TUP and the University represent and warrant that they are authorized to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.


17. This Agreement is binding on TUP's successors, transferees, heirs, and assigns.

18. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

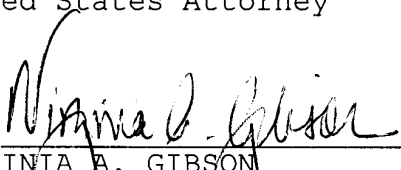
19. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA


DATED: 10/25/04

BY: 
PATRICK L. MEEHAN
United States Attorney


DATED: 10/25/04

BY: 
VIRGINIA A. GIBSON
Assistant United States Attorney
Chief, Civil Division

DATED: 10/25/04


BY: 
MARGARET L. HUTCHINSON
Assistant United States Attorney

DATED: 10/6/04

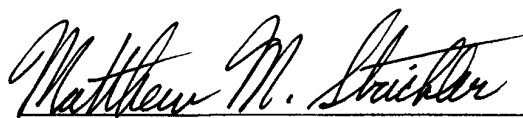
BY: 
LEWIS MORRIS
Chief Counsel to the Inspector
General
Office of Inspector General
United States Department of
Health and Human Services

TEMPLE UNIVERSITY PHYSICIANS

DATED: 10/18/04

BY: 
MARTIN S. DORPH
VP, CFO & Treasurer

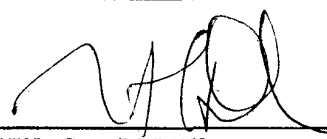
DATED: 10/8/04

BY: 
MATTHEW M. STRICKLER
Associate University Counsel

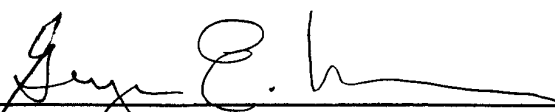
Counsel for Temple University Physicians

TEMPLE UNIVERSITY-OF THE COMMONWEALTH
SYSTEM OF HIGHER EDUCATION

DATED: 10/18/04

BY: 
MARTIN S. DORPH
VP, CFO & Treasurer

DATED: 10/8/04

BY: 
GEORGE E. MOORE
University Counsel

Counsel for Temple University-Of The Commonwealth System of
Higher Education